

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RESPIRONICS, INC. and RIC)
INVESTMENTS, INC.)
Plaintiff,)
)
v.) Civil Action No. 04-0336
)
INVACARE CORP.)
Defendant.)

MEMORANDUM ORDER

Gary L. Lancaster,
District Judge

April 7, 2006

This is an action in patent infringement. Before the court is plaintiffs' motion to strike portions of a supplemental appendix submitted by defendant with the Revised Joint Disputed Claim Terms Chart [doc. no. 245]. Because the first portion of defendant's supplemental appendix is not limited to copies of intrinsic or extrinsic evidence cited in the Revised Chart, the court will strike that portion of the filing.

While we commend any efforts by the parties to simplify the issues and assist the court in making its determination on claim construction issues, the fact remains that the only filing requested by the court at the March 6, 2006 hearing was a Revised Joint Disputed Claim Terms Chart. It follows that any new evidence, whether intrinsic or extrinsic, cited in that Chart could be submitted. It does not follow that revised versions of

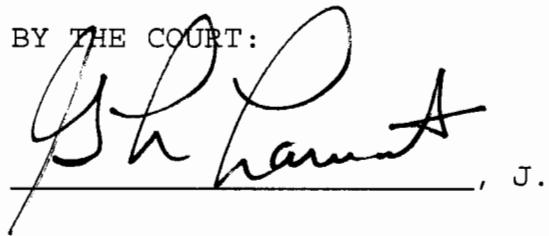
the power point presentation slides used at the March 6th hearing could be submitted with the Revised Chart. Again, although we recognize that defendants submitted these slides to assist the court, the fact remains that they were not requested by the court and were submitted without leave.

As the court informed the parties at the March 6th hearing, once the Revised Chart is reviewed, the court will notify the parties whether, or what, further proceedings are necessary regarding claim construction. It is conceivable that the court will be able to decide the claim construction issues based on the Revised Chart and the appendices of evidence currently before it. It is conceivable that the court will order a further hearing, at which defendant's revised slides may be presented to the court. It is conceivable that the court will request that the parties submit some form of briefing to assist the court in its construction, at which time the content of defendant's slides may be appropriately provided to the court. However, at present, the court has requested only a Revised Chart. As such, defendant's submission is improper at this time.

Therefore, this 7th day of April, 2006, IT IS HEREBY ORDERED that defendant's motion to strike [doc. no. 245] is GRANTED. Pages 1 through 111 of doc. no. 244, submitted under

seal, are hereby stricken. The court will accept Tabs 27 through 31 of that document for filing as they are a proper submission of additional evidence cited in the Revised Chart.

BY THE COURT:



A handwritten signature in black ink, appearing to read "John J. Haran", is written over a horizontal line. The signature is fluid and cursive, with "John" and "Haran" being the most distinct parts.

cc: All Counsel of Record